

EPA's Summary Report to Executive Order 13927, Accelerating the Nation's Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities

EPA has implemented several initiatives in support of the Administration's policy as outlined in Executive Order 13927 (which also support the policies of Executive Order 13807). These initiatives include the acceleration of water and wastewater infrastructure project grants, brownfield restoration projects, superfund clean-up efforts, and the modernization and reform of EPA's environmental review and permitting processes in support of high priority infrastructure projects. Initiatives in each of these program areas will effectively carry out the mandates of EO 13927 and 13807 for more efficient and effective Federal infrastructure decisions to help transform the Nation's economy while safeguarding our communities and maintaining a healthy environment.

First, EPA's strategic focus on improving its permitting programs have resulted in reduced backlog, accelerated timelines, and consistency and predictability for all permit applicants.

Second, for its Brownfield program, EPA announced the selection of 155 grants for communities and tribes totaling over \$65.6 million in funding through the agency's Assessment, Revolving Loan Fund, and Cleanup Grant Programs in May 2020. Of the communities and tribes selected, 118 can potentially assess or clean up brownfield sites in census tracts designated as federal Opportunity Zones. An Opportunity Zone is a designated economically distressed census tract where new private investment, under certain conditions, may be eligible for preferential tax treatment. Investing in communities and tribes with Opportunity Zones can leverage private investments in these communities and spur economic opportunity where it is needed most. In June 2020, the agency announced it was providing \$6.9 million in supplemental funding for 25 current successful Brownfields Revolving Loan Fund grantees. All 25 grantees have Opportunity Zones within their jurisdictions.

Third, EPA's Superfund program has adapted to the rapidly evolving COVID-19 situation around the country. The number one goal of the Superfund program is to protect people's health and the environment by cleaning up some of the nation's most contaminated land. During the past several months, EPA has maintained this goal by taking the necessary steps, including developing and providing national guidance, to ensure ongoing site cleanup activities prioritize the health and safety of communities, EPA staff, and contractors. EPA continues to work closely with federal, state, local, and tribal authorities to discuss COVID-19 related issues and site-specific decisions to pause and restart construction work and have maintained our readiness to respond to environmental emergencies at Superfund sites and releases of chemical, oil, radiological, biological, and other hazardous materials. Through our actions during the unprecedented situation of the past several months, EPA has been able to continue our Superfund site work across the country.

EPA updated the Administrator's Emphasis List in April 2020. As of April 2020, since the creation of the Administrator's Emphasis List in 2017, 19 sites have been removed from the list after achieving critical milestones that furthered site cleanup or solved issues slowing the pace of cleanups. This work follows the successes of Fiscal Year 2019, where EPA was able to delete all or part of 27 sites from the Superfund's National Priorities List (NPL), the largest number of deletions in a single year since 2001. In addition, over the last three years, EPA fully or partially deleted 57 sites from the NPL because of focused clean-up efforts. EPA partially deleted areas from two NPL sites in calendar year 2020 with more

planned as the year continues. Deletion from the NPL is necessary for a site to be eligible for Brownfields grants that help revitalize communities and promote economic growth. Deletion also announces to communities and signals potential developers and financial institutions that cleanup is complete. EPA recently celebrated 20 years of redeveloping more than 1,000 Superfund sites that now support 9,180 businesses generating \$58.3 billion in sales and employing more than 208,400 people earning a combined income of more than \$14.4 billion.

Fourth, EPA has continued its streamlining initiatives specific to its's roles and responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. EPA has been guided in this process through periodic surveys soliciting feedback from our partner federal agencies. Initial feedback led to the development of additional letter-writing guidance to EPA regions. This further guidance has improved the quality and consistency of our NEPA/309 comment letters, increased our focus on early engagement with lead agencies; and improved the development and tracking of performance measures.

Our federal partners had voiced concerns with the subjectivity and negativity of EPA's rating (i.e., grade) of their draft environmental impact statement (EIS) documents. In response, EPA issued a memorandum in October 2018 discontinuing the practice of assigning alphanumeric ratings in the NEPA/309 comment letters. The discontinuance of the rating system followed a comprehensive evaluation by both EPA headquarters and regional NEPA/309 staff members, and external federal agency partners. This change helped to focus attention on resolving issues, eliminate the perception that ratings were inconsistently applied across the agency, minimize any confusion on the part of partner agencies and the public, and strengthen constructive interagency engagement and collaboration.

To improve efficiencies and to reduce unnecessary delays to projects, EPA also updated and modified its EIS filing deadline in August 2019 to allow agencies more time for EIS development. This change was based on agencies' feedback to EPA's 2018 survey to identify and improve the effectiveness of the 309 Program where many federal agencies requested additional time to file their EISs with EPA.

EPA is currently in the process of updating its 309 Policy and Procedures Manual. This guidance establishes the policies and procedures for carrying out EPA's responsibilities under Section 309 of the Clean Air Act to review and comment on federal actions affecting the quality of the environment. It has not been significantly updated since 1984. The update will be aligned with goals outlined in E.O. 13807, reflect organizational changes, and incorporate the Council on Environmental Quality's (CEQ) revision to the NEPA implementing regulations.

Other EPA streamlining efforts focused on permitting processes and programmatic approaches to reduce duplicative actions. For example, EPA reduced its permit backlog (applications greater than 180 days) by over 50% through a collaborative effort with National Program Managers and building on experience from state environmental agencies. This was an agency priority goal (APG) executed through multiple process improvement events and a new tracking system.

Additionally, EPA is developing a Clean Water Act (CWA) Section 404 handbook to guide EPA field staff. The handbook will instruct staff how to communicate specific, targeted, and regulation/authority-based information needed to ensure more streamlined and environmentally responsive engagement in the CWA Section 404 review process with U.S. Army Corps of Engineers (USACE) counterparts. The primary

goal of this resource is to communicate effectively and consistently information needs up front, which will help USACE execute an efficient and timely CWA Section 404 review process.

Finally, EPA has initiated the development of a survey for EPA's ESA Practitioners. During EPA-wide permitting process improvement events, one common issue identified was ESA and its impact on the timely issuance of permits. The goal of this survey is to better understand the respective expertise and capabilities across the Regions and in Headquarters, as well as the frequency, complexity, successes, and challenges experienced as EPA collectively conduct ESA consultation. The survey result will help EPA collect and analyze ESA consultation baseline data and trends, and aid towards generating and prioritizing opportunities to improve EPA's approach to ESA consultation.

EPA Region 4, in partnership with U.S. Fish and Wildlife Service and National Marine Fisheries Service, recently developed a regional framework for the Endangered Species Act (ESA) Water Quality Standards (WQS) Consultation process. The framework stemmed from a broader memorandum of agreement between the agencies and articulated dispute elevation criteria essential for timely problem solving. Successful implementation led to time and cost savings on complex ESA consultations with differing opinions on scope and assessment methodologies on multiple water quality standards projects. The interagency team was recently presented with a National Honors Award.

Specific planned actions to sections of the EO applicable to EPA are identified below.

Section 6 National Environmental Policy Act (NEPA) Emergency Regulations and Emergency Procedures¹

Through the Water Infrastructure Finance and Innovation Act (WIFIA), EPA is playing a key role in President Trump's efforts to improve and upgrade our nation's water infrastructure in communities across the country. With this loan closing, EPA has now issued 24 WIFIA loans totaling \$5.3 billion in credit assistance to help finance \$11.7 billion for water infrastructure projects while creating 25,000 jobs.

WIFIA Program

All WIFIA projects thus far have been eligible for either a categorical exclusion (CATEX) or streamlined review through the programmatic environmental assessment (PEA). Recently closed projects are available at <https://www.epa.gov/wifia/wifia-closed-loans>. All WIFIA selected projects available at <https://www.epa.gov/wifia/wifia-selected-projects>. (Office of Water)

Status: Completed for all identified projects; future projects will follow a similar evaluation process.

¹ Most EPA actions related to infrastructure investments are exempt from NEPA under the following statutes:

- Section 511(c) of the Clean Water Act exempts most EPA actions under the Clean Water Act from the requirements of NEPA.
- Section 7(c) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 793(c)(1)) exempts all EPA actions under the Clean Air Act from the requirements of NEPA.

Other related EPA procedures or environmental reviews under enabling legislation are functionally equivalent to the NEPA process and thus exempt from the procedural requirements of NEPA.

Section 8 Emergency Regulations and Nationwide Permits Under the Clean Water Act and Other Statutes Administered by the Army Corps of Engineers

EPA stands ready to expeditiously work with U.S. Army Corps of Engineers (USACE) in processing and reporting on all EO requests that fall under the purview of the Clean Water Act (CWA) Section 404, the Rivers and Harbors Act (RHA) Section 10, and the Marine Protection, Research, and Sanctuaries Act (MPRSA) Section 103. Additionally, the Agency will engage in early coordination efforts with USACE to ensure that we can provide the needed support.

Section 404 Program and MPRSA

EPA may have a coordination or concurrence role under CWA Section 404 and RHA Section 10, and EPA coordinates its concurrence review processes with USACE at the EPA Region and USACE District level under MPRSA Section 103. The latter are coordinated under Site Management and Monitoring Plans and/or through interagency Regional Dredging Teams. (Office of Water)

Status: Completed for all identified projects; future projects will follow a similar evaluation process.

Section 9 Other Authorities Providing for Emergency or Expedited Treatment of Infrastructure Improvements and Other Activities

EPA is taking all appropriate steps to use its lawful emergency authorities and other authorities to respond to the national emergency and to facilitate the Nation's economic recovery. EPA has reviewed its statutes, regulations, and guidance documents that may provide for emergency or expedited treatment (including waivers, exemptions, or other streamlining) with regard to its actions pertinent to infrastructure, energy, environmental, or natural resources matters. EPA has identified its planned or potential actions, including actions to facilitate the Nation's economic recovery, that may be subject to emergency or expedited treatment as follows:

America Recycles

The America Recycles initiative is a collaborative effort among EPA, states, and public and private-sector stakeholders to advance sustainable materials management by strengthening the U.S. recycling system. The America Recycles work recognizes the need to stimulate investments in infrastructure for recyclables to foster a more resilient solid waste system capable of withstanding disruptions – such as trade policies and evolving waste streams. U.S. solid waste management infrastructure needs to be enhanced to maintain pace with rapidly evolving waste streams, and aging infrastructure is leading to inefficient use of domestic resources.

EPA posted a Federal Register Notice seeking comments on the existing Comprehensive Procurement Guidelines (CPG) designations and procurement recommendations. The CPG promote a buy-recycled program for the federal government. Section 6002 of the Resource Conservation and Recovery Act (RCRA) requires EPA to designate items that are or can be made with recovered materials and develop recommendations for procuring such items. After EPA designation, federal and other procuring agencies (using appropriated federal funds for their procurements) must purchase designated items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. To implement its responsibilities under Section 6002, EPA has developed CPGs to harness federal purchasing power to stimulate the demand for recovered materials. (Office of Land and Emergency Management)

Status: Ongoing

Anaerobic Digestion (AD) in Communities

The Supporting Anaerobic Digestion (AD) in Communities funding opportunity for up to \$3 million is now posted on grants.gov (EPA-OLEM-ORCR-20-02) to accelerate the development of new or enhance/increase existing anaerobic digestion capacity and infrastructure in the United States.

The goals of this funding opportunity are to:

- 1) increase use of anaerobic digestion to manage food waste, and

2) support the development of new AD infrastructure in the U.S.
(Office of Land and Emergency Management)

Status: Ongoing. Applications are due July 14, 2020.

New Source Review Error Corrections Rule

EPA is correcting inadvertent errors and update references in the New Source Review (NSR) rules. The NSR regulations in 40 CFR parts 49, 51 and 52 have undergone restructuring and revisions during its history, resulting in a number of inadvertent errors during that time. In addition, the 1990 Clean Air Act amendments created programs (e.g., title V and Part 63) and some other revisions that are not reflected in the current NSR regulations. This rule corrects these errors and updates within the NSR regulations, thereby, improving clarity and reducing unintended confusion. Entities potentially affected directly by this action include sources in all industry categories. The rule does not alter any NSR policy or change the NSR program as a whole. It is expected to assist permit applicants in preparing more timely and more acceptable permit applications. Entities potentially affected by this action also include federal, state, and local air pollution control agencies (air agencies) responsible for permitting sources pursuant to the NSR program. (Office of Air and Radiation)

Status: Ongoing. The final rule is anticipated to be issued in July 2020.

Plantwide Applicability Limitation (PAL) Final Guidance

EPA promulgated the PAL regulations as part of the 2002 New Source Review (NSR) Reform Rule. 67 FR 80186 (December 31, 2002). A PAL is an optional flexible permitting mechanism available to major stationary sources that involves the establishment of a plantwide emissions limit, in tons per year, for a regulated NSR pollutant. A PAL represents a simplified NSR applicability approach that provides a source with the ability to manage physical and operational changes, and the impacts of those changes on facility-wide emissions, without triggering major NSR or the need to conduct project-by-project major NSR applicability analyses. This memorandum provides guidance related to specific issues raised by stakeholders regarding the PAL regulations, including PAL permit reopening, PAL expiration, PAL renewal, PAL termination, and monitoring requirements for PALs. This memorandum also contains a discussion of the general advantages of PALs, other considerations relevant to potential PAL permit applicants, and the results of a PAL implementation survey conducted by the Office of Air Quality Planning and Standards. Entities potentially affected directly by this action include major stationary sources. Approximately 70 PAL permits have been issued to sources in a wide range of industry categories since the 2003 effective date of the NSR Reform Rule and subsequent state adoption of conforming regulations. However, EPA has become aware, through stakeholder input, that certain elements of the PAL regulations have been perceived as unduly onerous, or as sources of uncertainty and potential risk, and that those concerns have hindered more widespread PAL adoption. Wider application of PALs is expected to reduce permitting and compliance costs. (Office of Air and Radiation)

Status: Ongoing. Draft guidance issued February 13, 2020, for public comment. Final scheduled for signature August 2020.

PSD and NSR: Project Emissions Accounting

Under the New Source Review (NSR) pre-construction permitting program, sources undergoing modifications need to determine whether their modification is considered a major modification and thus subject to the major NSR pre-construction permitting program. A source owner determines if its source is undergoing a major modification under NSR using a two-step applicability test. The first step is to determine if there is a “significant emission increase” of a regulated NSR pollutant from the proposed modification (Step 1) and the second step is to determine if there is a 'significant net emission increase' of that pollutant (Step 2). EPA’s proposed revisions clarify that emissions increases and decreases from a modification are considered as part of Step 1 of the NSR major modification applicability test. The final rule is intended to provide clarity for potential permit applicants. It will also offer relief (i.e., lesser permit requirements) for some applicants. Entities potentially affected directly by this action include sources in all industry categories. Entities potentially affected by this action also include federal, state, and local air pollution control agencies (air agencies) responsible for permitting sources pursuant to the NSR program. (Office of Air and Radiation)

Status: Ongoing. The final rule is anticipated to be issued in November 2020.

Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

This final rule will allow major sources of hazardous air pollutants (HAP) to reclassify as area sources under section 112 of the Clean Air Act at any time, provided they reduce their actual and potential HAP emissions to below major source thresholds. This action finalizes amendments to the General Provisions to the National Emission Standards for Hazardous Air Pollutants (NESHAP) and amendments to individual NESHAP subparts to account for the regulatory provisions we are finalizing through this rule. The final amendments to the General Provisions provide that any major source can reclassify to area source status at any time by reducing its potential to emit (PTE) HAP to below the major source thresholds of 10 tons per year (tpy) of any single HAP and 25 tpy of any combination of HAP. EPA estimates potential net annual cost savings of \$75.4 Million (1st year) and \$91.7 Million (subsequent years) in 2017 dollars.

Status: Ongoing. EPA anticipates final signature in July 2020.

Storage Tank Vessels

The COVID-19 emergency has resulted in a reduced demand for organic liquid products. EPA is proposing amendments to the 1984 New Source Performance Standards (NSPS) Volatile Organic Liquid Storage Vessels to allow for in-service inspection of floating roofs, as is currently allowed in other rules. This will allow for inspections that do not require tanks to be taken out of service

and reduce storage capacity. Affected industries would include refineries, chemical manufacturers, and storage terminals. Cost savings and emission reductions from these actions are anticipated because storage tanks will no longer need to be emptied and degassed. (Office of Air and Radiation)

Status: Ongoing. The draft rule is anticipated in September 2020 and a final rule in fall 2020.

[Uniform Grant Guidance, 2 CFR Part 200, to expedite infrastructure or environmental protection projects funded by EPA](#)

EPA's Office of Grants and Debarment (OGD) has authority under 2 CFR 1500.3(a) to grant case by case exceptions to requirements in the Uniform Grant Guidance, 2 CFR Part 200, to expedite infrastructure or environmental protection projects funded by EPA financial assistance at the request of recipients or program offices. Additionally, 2 CFR 1500.3(b) provides EPA with unique authority to grant both case by case and class exceptions to EPA program specific regulations, such as those governing the Clean Water and Drinking Water State Revolving Funds (40 CFR Part 35, Subpart K and 40 CFR Part 35, Subpart L respectively) and cooperative agreements for Superfund cleanups (40 CFR Part 35, Subpart O). These exceptions may be granted to expedite construction of wastewater or drinking water infrastructure or remediation of contaminated sites. EPA regulations at 2 CFR 1500.8 further allow recipients to obtain funding for activities carried out more than 90 days prior to award of the financial assistance agreement with EPA approval if certain requirements are met. Allowing pre-award costs may expedite initiation of EPA funded projects which generate economic benefits for communities impacted by COVID-19. EPA is prepared to deploy these authorities on a priority basis to support economic recovery from the COVID-19 public health emergency if requested to do so by recipients of EPA financial assistance or program offices.

Status: Completed for all identified projects; future projects will follow a similar evaluation process.